

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

10 AMERICAN ECONOMY INSURANCE CO. ) Civil No.06CV2395 WQH (NLS)  
11 Plaintiff, )  
12 v. )  
13 NICEFORO HERRERA et al., )  
14 Defendants. )  
\_\_\_\_\_  
NOTICE AND ORDER SETTING  
EARLY NEUTRAL EVALUATION  
CONFERENCE

16 IT IS HEREBY ORDERED that an Early Neutral Evaluation of your case will be held on  
17 January 22, 2007 at 9:30 a.m. in the Chambers of Magistrate Judge Nita L. Stormes, United States  
18 Courthouse, 940 Front Street, Room 1118, San Diego, California 92101.

19 The following are mandatory guidelines for the parties preparing for the Early Neutral  
20 Evaluation Conference.

21       1.     **Purpose of Conference:** The purpose of the Early Neutral Evaluation Conference  
22 (“ENE”) is to permit an informal discussion between the attorneys, parties, and the settlement judge  
23 of every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference  
24 discussions will be informal, off the record, privileged and confidential. Counsel for any non-English  
25 speaking parties is responsible for arranging for the appearance of an interpreter at the conference.

26        2.    **Personal Appearance of Parties Is Required:** All parties, adjusters for insured  
27 defendants, and other representatives of a party having full and complete authority to enter into a  
28 binding settlement, and the principal attorneys responsible for the litigation, must be present **in person**

1 and legally and factually prepared to discuss settlement of the case. Full authority to settle means that  
 2 the individuals at the ENE be authorized to fully explore settlement options and to agree at that time  
 3 to any settlement terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*,  
 4 871 F.2d 648, 653 (7<sup>th</sup> Cir. 1989). The person needs to have “unfettered discretion and authority” to  
 5 change the settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-486 (D.  
 6 Ariz. 2003). One of the purposes of requiring a person with unlimited settlement authority to attend  
 7 the conference is that the person’s view of the case may be altered during the face-to-face conference.  
 8 *Pitman*, 216 F.R.D. at 486. Limited or sum certain authority is not adequate. *Nick v. Morgan’s*  
 9 *Foods, Inc.*, 270 F.3d 590, 595-597 (8<sup>th</sup> Cir. 2001). Counsel appearing without their clients (whether  
 10 or not counsel has been given settlement authority) will be cause for immediate imposition of  
 11 sanctions and will also result in the immediate termination of the conference.

12       3.       **Full Settlement Authority Required:** In addition to counsel who will try the case,  
 13 a party or party representative with full settlement authority must be present for the conference. In  
 14 the case of a corporate entity, an authorized representative of the corporation who is not retained  
 15 outside counsel must be present and must have discretionary authority to commit the company to pay  
 16 an amount up to the amount of the plaintiff’s prayer (excluding punitive damage prayers). The  
 17 purpose of this requirement is to have representatives present who can settle the case during the course  
 18 of the conference without consulting a superior. Counsel for a government entity may be excused  
 19 from this requirement so long as the government attorney who attends the ENE conference (1) has  
 20 primary responsibility for handling the case; and (2) may negotiate settlement offers which the  
 21 attorney is willing to recommend to the government official having ultimate settlement authority.

22       4.       **Confidential ENE Statements Required:** No later than three (3) court days prior to  
 23 the ENE, the parties shall submit confidential statements of five pages or less directly to the chambers  
 24 of Magistrate Judge Stormes outlining the nature of the case, the claims, and the defenses. These  
 25 statements shall not be filed or served on opposing counsel.

26       5.       **New Parties Must Be Notified by Plaintiff’s Counsel:** Plaintiff’s counsel shall give  
 27 notice of the ENE to parties responding to the complaint after the date of this notice.

28       6.       **Case Management Under the Amended Federal Rules:** In the event the case does

1 not settle at the ENE, the parties can expect to leave the ENE with Rule 26 compliance dates or  
2 deadlines. Parties shall therefore be prepared to discuss the following matters at the conclusion of the  
3 ENE conference:

- 4 a. Any anticipated objections under Federal Rule of Civil Procedure 26(a)(1)(E)  
5 to the initial disclosure provisions of Federal Rule of Civil Procedure  
6 26(a)(1)(A-D);
- 7 b. The scheduling of the Federal Rule of Civil Procedure 26(f) conference within  
8 24 days following the ENE;
- 9 c. The date of initial disclosure and the date for lodging the discovery plan within  
10 14 days following the Rule 26(f) conference; and,
- 11 d. The scheduling of a Case Management Conference pursuant to Federal Rule  
12 of Civil Procedure 16(b) within 21 days following the Rule 26(f) conference.

13 The Court will issue an order following the ENE addressing these issues and setting dates as  
14 appropriate.

15 7. **Requests to Continue an ENE Conference:** Local Rule 16.1(c) requires that an ENE  
16 take place within 45 days of the filing of the first answer. Requests to continue ENEs are rarely  
17 granted. However, the Court will consider formal, written *ex parte* requests to continue an ENE  
18 conference when extraordinary circumstances exist that make a continuance appropriate. In and of  
19 itself, having to travel a long distance to appear in person is not “extraordinary.” **Absent  
20 extraordinary circumstances, requests for continuances will not be considered unless submitted  
21 in writing no less than seven (7) days prior to the scheduled conference.**

22 Questions regarding this case or the mandatory guidelines set forth herein may be directed to  
23 the Magistrate Judge's law clerks at (619) 557-5391.

24 A Notice of Right to Consent to Trial Before a United States Magistrate Judge is attached for  
25 your information.

26 DATED: December 22, 2006

  
27 Hon. Nita L. Stormes  
28 U.S. Magistrate Judge  
United States District Court

**NOTICE OF RIGHT TO CONSENT TO TRIAL  
BEFORE A UNITED STATES MAGISTRATE JUDGE**

IN ACCORDANCE WITH THE PROVISIONS OF 28 U.S.C. § 636(c), YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE JUDGE OF THIS DISTRICT MAY, UPON THE CONSENT OF ALL PARTIES, ON FORM 1A AVAILABLE IN THE CLERK'S OFFICE, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. COUNSEL FOR THE PLAINTIFF SHALL BE RESPONSIBLE FOR OBTAINING THE CONSENT OF ALL PARTIES, SHOULD THEY DESIRE TO CONSENT.

YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT TO CONSENT IS ENTIRELY VOLUNTARY. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE JUDGE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.

JUDGMENTS OF THE U.S. MAGISTRATE JUDGES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.